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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

COULTER, KENNETH R

ART UNIT

PAPER NUMBER

2141

DATE MAILED: 04/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/892,044

Applicant(s)

MCINTYRE ET AL.

Examiner

Kenneth R. Coulter

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 20 December 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 December 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Claim Objections***

1. Applicant is advised that should claim 5 be found allowable, claim 10 will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP 706.03(k).

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1 – 16 are rejected under 35 U.S.C. 102(e) as being anticipated by Niamir (U.S. Pat. Pub. No. 2002/0027567) (Listing Network for Classified Information).

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2.1 Regarding claim 1, Niamir discloses a system for managing digital images, comprising:

a server for allowing controlled access to a user image storage device having at least one digital image file of an image, said server having a communication system capable of communicating with a plurality of user computers, at least one of said user computers having said at least one digital image file, a software program for controlling access to said at least one digital image file, said software program for permitting automatic access to said at least one digital image file on said user computer by a third party and monitoring access by said third party without any further authorization by said user (Abstract "peer-to-peer computer network"; Figs. 1, 2, 5; paragraph 99; paragraph 57 (see below)).

Optionally system 10 comprises one or more authentication servers 64 (FIG. 1) connected to network 14. Authentication servers 64 may comprise software hosted on the same computers that are hosting CSS software 50. Authentication servers 64 receive user ID and password from authorized users of system 10 (or otherwise authenticate the users) and respond with an **authentication message**. Users who are authenticated can then have their listings 30 synchronized with and saved at a CSS 16 from where they can be retrieved by other users of system 10 for searching. A user may have an account on an authentication server 64 such that by logging on to the **authentication server** (for example by entering a username and password) the user can authenticate himself/herself. (paragraph 99).

System 10 operates as follows. Over time, users of user computer systems 12 invoke LLS 18 to generate listings 30. Listings 30 are initially stored in a database 20 on the user computer system 12 from which the listing originated. Each LLS 18 uploads identifying information about its locally stored listings 30 to

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one or more of CSSs 16. Each listing may include one or more file attachments 30A. File attachments may include, for example, **picture files**, detailed descriptions, menus, audio or video files or the like. Large file attachments 30A are typically not uploaded to CSS 16. Upon receipt of a new listing 30, CSS 16 stores the listing in database 54 and indexes the listing 30, as appropriate. (paragraph 57).

2.2 Per claim 2, Niamir teaches a system according to claim 1 wherein said at least one digital image file includes an electronic address for identifying that image came from said user (Abstract; Figs. 2, 5; paragraph 99).

2.3 Regarding claim 3, Niamir discloses a system according to claim 1 wherein said third party pays an access fee for use and/or down loading of said image from said user image file (p. 8, paragraphs 103, 104, 105, 106, 107 (see below)).

By way of example, a first user might post a listing offering a collectable item for sale for a certain price. A second user might conduct a search and locate the listing. The second user wants to purchase the item and activates the acceptance control on the second user's user interface. The second user's local listing server software generates a message to the first user informing the first user that the second user wishes to purchase the item. Optionally the second user may enter a text message to be sent to the first user along with the acceptance. The first user agrees to the purchase by operating the acceptance control provided by the first user's local listing server software (the user interface may provide different controls for sending an indication of acceptance to a first user who posts a listing and to allow the first user to respond to an indication of acceptance by a second user). The first user's local listing server software also sends a message including the address of the second user, the address of the first user and a transaction price to an e-commerce server. E-commerce server 31 generates and sends to the second user a form requesting from the **second user payment information**. The second user enters, for

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example, the **second user's credit card information** and operates confirmation control 35. **E-commerce server** 31 validates the credit card transaction and sends a message to the local listing server software of the first user that the **payment** has been processed. The first user can then ship the item to the second user and obtain payment from the operator of the e-commerce server. (paragraph 107).

2.4 Per claim 4, Niamir teaches a system according to claim 3 wherein said service provider assigns a first predetermined **credit** to the account of the user of said downloaded image, a debit to the account of the third party downloading the image, and a second predetermined credit to the service provider (paragraphs 103 – 107 “entering into a trade”).

2.5 Regarding claims 5 and 10, Niamir discloses a system according to claim 1 wherein a report is provided to said user regarding access to said digital media file (Abstract; Figs. 2, 5; paragraph 99).

2.6 Per claims 6 – 9 and 11 – 16, the rejection of claims 1 – 5 and 10 under 35 USC 102(e) (paragraphs 2.1 – 2.5 above) applies fully.

### ***Response to Arguments***

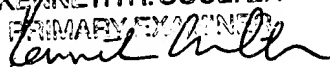
3. Applicant's arguments with respect to claims 1 - 16 have been considered but are moot in view of the new ground(s) of rejection.

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4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kenneth R. Coulter whose telephone number is 571 272-3879. The examiner can normally be reached on 5 4 9.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rupal Dharia can be reached on 571 272-3880. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

KENNETH R. COULTER  
PRIMARY EXAMINER  


krc